IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5471 OF 2004

Baban Maruti Patole ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. Shiv Motariya, for the Applicant.

Mr. K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

20th December 2004

P.C.:

. This matter was dismissed for default in the morning session. However, later on, Counsel for the Applicant mentioned that at the relevant time when the matter was called out, he was held up in some other Court. In view of the reason stated, the order dismissing the matter for default is recalled, the matter is restored to file and heard on merits.

. Heard Counsel for the parties. It is not

in dispute that except offence under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, all other offences, for which case has been registered against the Applicants are bailable. The offence under section 3(1)(x) is one of causing intentional insult or intimidation with intent to humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view. The complainant alleges that while he was proceeding towards the police station, Applicant No. 2 made offending utterances. On that basis, all Applicants have been named as they were moving together. In the first place, so far as Applicant No. 1 is concerned, as it is matter of record that he belongs to Scheduled Caste, the question of attracting provisions of section 3(1)(x) of the Act will not arise. In other words, assuming that he himself was responsible for the offending utterances, even then no offence takes place. Insofar as Applicants Nos. 3 and 4 are concerned, it is argued that accused No. 4 is a mentally retarded person. Without going into the correctness of that stand, to my mind, accepting the prosecution case as it is, it appears at best that the Applicant No. 2 is

alleged to have made offending utterances. If it is so, the Applicants Nos. 3 and 4 cannot be made responsible for those utterances and prosecuted for offence under section 3(1)(x) of the Act. The learned A.P.P. contends that besides the complaint, there is further material to show that even the other Applicants Nos. 1, 3 and 4 made the utterances. Reliance is placed on the statement of complainant's wife, wherein she has generally stated that all the Applicants made those utterances. It is too much to accept that plea. When the complainant is specific that the accused No. 2 had allegedly made offending utterances, it is obvious that the witness, his wife, has generally named other Applicants, which cannot be the basis to say that they have committed the alleged offence. In the circumstances, Applicants Nos. 1, 3 and 4 deserve to be enlarged on anticipatory bail.

. Insofar as Applicant No. 2 is concerned, the grievance made on behalf of the Applicant is that the complainant is in the habit of registering false cases under the Act of 1989 in view of the drastic consequences provided for under that Act. Besides, it appears that the

complainant has not only implicated accused No.2, who is alleged to have made the offending utterances, but also other Applicants. Taking overall view of the matter, even the Applicant No. 2 will have to be given limited protection to enable the Applicant No. 2 to apply for bail before the appropriate Court after surrendering. The Applicant No. 2 is, therefore, granted time to surrender before the appropriate Court till 24-12-2004, on which date, the Applicant No.2 may apply for being released on bail and if such application is moved, the Court may proceed to pass appropriate orders on the said application on its own merits in accordance with law uninfluenced by any of the observations made in this order. The said Applicant No. 2 shall, however, give advance notice to the investigating officer, so that the bail application can proceed for hearing on the date when it is presented before the appropriate Court. Till such time, Applicant No. 2 not to be arrested.

. Insofar as Applicants Nos. 1, 3 and 4 are concerned, they are granted anticipatory bail on the following conditions.

(a) Applicants Nos. 1, 3 and 4 are granted anticipatory bail in connection with CR.No. 22/2004 registered with Khed Police Station on executing personal bond in the sum of Rs. 10,000/- (Rupees ten thousand only) each with one or two sureties in the like amount.

(b) The Applicants Nos. 1, 3 and 4 shall abide by the conditions mentioned in section 438(2) of the Code of Criminal Procedure, as applicable to the State of Maharashtra.

. Application disposed of on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)